

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	22 Civ. 9608 (PKC)
	:	
INFINITY Q DIVERSIFIED ALPHA FUND,	:	
	:	
<i>Defendant.</i>	:	
-----X	:	

**STIPULATION AND PROPOSED ORDER RE:
FURTHER STAY OF OPT-OUT ACTIONS**

WHEREAS, pursuant to its order dated January 10, 2023, as amended on March 10, 2023 (the “Order”), the Court appointed Andrew M. Calamari to serve as Special Master for the Special Reserve established by the Fund¹ and to carry out certain duties and responsibilities enumerated in the Order;

WHEREAS, pursuant to paragraph 1 of the Order, this Court has exclusive jurisdiction over the Special Reserve and over all matters arising out of, and related to, the Special Reserve;

WHEREAS, as set forth in the Order, by motion filed February 24, 2023, certain plaintiffs who opted out of the Mediated Securities Class Actions (the “Opt-Out Plaintiffs”), as defined in the Order, and who filed individual securities actions (the “Opt-Out Actions”) in the Supreme Court of the State of New York and County of New York asserting claims exclusively under the Securities Act, moved for limited intervention in this case;

¹ All capitalized terms and abbreviations used herein have the same meaning as those used in the Order unless otherwise specified.

WHEREAS, pursuant to paragraph 12 of the Order, the Court stayed certain pending or future civil legal proceedings relating to the Fund, but carved out, *inter alia*, pursuant to subparagraph 12(viii), (a) any litigation against non-natural persons who are purported Indemnitees based exclusively on the Securities Act, and (b) civil discovery in the civil actions described in subparagraph 12(viii) of the Order, but only to the extent authorized by applicable federal and state statutes and rules of procedures;

WHEREAS, as set forth in Exhibit A to the Order, “Indemnitees” as used in subparagraph 12(viii), includes: (a) current and former trustees of the Fund, including the series trustees of the Fund; (b) current and former officers of the Fund; (c) Quasar Distributors, LLC (“Quasar”); and (d) U.S. Bancorp Fund Services, LLC (“USBFS”);

WHEREAS, as set forth in note 1 to paragraph 12 of the Order, the Court noted that carved out from the stay of litigation in the Order are the Opt-Out Plaintiffs’ Securities Act claims against USBFS, Quasar, EisnerAmper LLP (“EisnerAmper”), Infinity Q Capital Management LLC (“IQCM”), James Velissaris, Leonard Potter, Scott Lindell, Bonderman Family Limited Partnership, LP (“BFLP”), and Infinity Q Management Equity LLC (“IQME”), and that nothing in the Order prohibited the Opt-Out Actions from proceeding against those above-referenced persons or entities;

WHEREAS, as also set forth in note 1 to paragraph 12 of the Order, the Court noted that nothing in the Order prohibited the Opt-Out Plaintiffs from obtaining otherwise authorized civil discovery in the Opt-Out Actions from the Trust, the Fund, John C. Chrystal, Albert J. DiUlio, S.J., Christopher E. Kashmerick, Harry E. Resis, Russell B. Simon, or Steven J. Jensen;

WHEREAS, pursuant to paragraph 12(B)(i) of the Order, the SEC or Special Master may move this Court on notice to the affected parties and for good cause shown to have the stay of

litigation in the Order extend to, *inter alia*, actions against non-natural persons based exclusively on the Securities Act in order to protect the Fund and to establish the appropriate Special Reserve to effect a final distribution to the Fund's shareholders;

WHEREAS, pursuant to paragraph 12(B)(ii) of the Order, the Opt-Out Plaintiffs may move this Court on notice to the affected parties and for good cause shown to, *inter alia*, modify the stay of litigation in the Order;

WHEREAS, to prevent the dissipation of the Special Reserve as a result of legal fees and costs that the Fund is obligated to continue to pay on behalf of certain Indemnitees in connection with the Opt-Out Actions, the Opt-Out Plaintiffs, with the consent of the Special Master and the parties hereto, have now agreed to extend the stay of litigation in the Order to the Opt-Out Plaintiffs' claims against USBFS and Quasar in the Opt-Out Actions, including any otherwise authorized discovery relating to those claims, until 7 days after written notice is filed by the Opt-Out Plaintiffs with this Court, which notice shall not be given before July 9, 2024, or upon further order of this Court;²

WHEREAS, in agreeing voluntarily to extend temporarily the stay of litigation in the Order to the Opt-Out Plaintiffs' claims against USBFS and Quasar in the Opt-Out Actions, including any otherwise authorized discovery relating to those claims, the Opt-Out Plaintiffs reserve any and all rights to challenge this Court's authority to stay the Opt-Out Actions and do not waive any arguments that they might advance in support of such a challenge;

² The extension of the stay of litigation in the Order to the Opt-Out Plaintiffs' claims against USBFS and Quasar in the Opt-Out Actions shall not extend to (i) USBFS's appeal of the denial of its motion to dismiss the claims against it under Section 15 of the Securities Act; or (ii) the Opt-Out Plaintiffs' cross-appeal of the grant of USBFS's motion to dismiss the claims against it under Section 11 of the Securities Act. Notwithstanding the foregoing, USBFS and the Opt-Out Plaintiffs agree that during the pendency of the stay, they will file only necessary administrative documents in that appeal and cross-appeal and will not file any substantive briefs or motions.

WHEREAS, for the avoidance of any doubt, nothing in this Stipulation shall modify the rights of the SEC, the Special Master, or the Opt-Out Plaintiffs under paragraph 12(B) of the Order;

WHEREAS, nothing herein shall alter any rights of USBFS or Quasar to assert any claims or defenses in this case, or in the Opt-Out Actions;

WHEREAS, USBFS, Quasar, and the Opt-Out Plaintiffs hereby agree that, notwithstanding (i) the extension of the stay of litigation in the Order to the Opt-Out Plaintiffs' claims against USBFS and Quasar in the Opt-Out Actions; and (ii) the Preliminary Conference Order entered in the Opt-Out Actions on April 22, 2024, neither the Opt-Out Plaintiffs, USBFS, nor Quasar waive their right to disclosure in the Opt-Out Actions;

WHEREAS, for the avoidance of any doubt, the extension of the stay of litigation in the Order to which the Opt-Out Plaintiffs have agreed, and to which the Special Master and the parties hereto have consented, shall not apply to the Opt-Out Actions against EisnerAmper, IQCM, James Velissaris, Leonard Potter, Scott Lindell, BFLP, or IQME, nor shall it prohibit the Opt-Out Plaintiffs from obtaining otherwise authorized civil discovery in the Opt-Out Actions that are not subject to the stay of litigation in the Order (as extended by this Stipulation) from the Trust, the Fund, John C. Chrystal, Albert J. DiUlio, S.J., Christopher E. Kashmerick, Harry E. Resis, Russell B. Simon, or Steven J. Jensen;

NOW, THEREFORE, the Special Master, the parties, the Opt-Out Plaintiffs, USBFS, and Quasar, by and through their undersigned attorneys, hereby stipulate and agree that:

1. The Opt-Out Actions against USBFS and Quasar shall be stayed until 7 days after written notice filed by the Opt-Out Plaintiffs with this Court, which notice shall not be given before July 9, 2024, or upon further order of this Court;

2. Upon lifting of the stay pursuant to the terms of this Stipulation, the Opt-Out Plaintiffs, USFBS, and Quasar shall jointly apply in the Opt-Out Actions for an order re-setting pretrial disclosure deadlines as to the parties to those actions subject to the stay;
3. For the avoidance of doubt, nothing in this Stipulation shall constitute or be deemed to constitute a waiver by any party to this Stipulation of its disclosure rights in the Opt-Out Actions after the stay is lifted pursuant to the terms of this Stipulation; and
4. Except as expressly stated, nothing herein shall be deemed to alter the terms of the Order.

Agreed to this 29th day of May, 2024:

/s/ Daniel S. Noble

Daniel S. Noble
KRIEGER LEWIN LLP
350 Fifth Avenue, Flr. 77
New York, NY 10118
Tel: (212) 390-9555

Attorneys for the Special Master

/s/ Joseph E. Floren

Joseph E. Floren
MORGAN, LEWIS & BOCKIUS LLP
One Market
Spear Street Tower
San Francisco, CA 94105-1596
Tel: (415) 442-1391

Attorneys for the Fund

/s/ Neal R. Jacobson

Neal R. Jacobson
SECURITIES AND EXCHANGE
COMMISSION
100 Pearl St., Suite 20-100
New York, NY 10004-2616
(212) 336-1100

Thomas P. Cimino, Jr.
VEDDER PRICE LLP
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609 7784

Attorneys for U.S. Bancorp Fund Services, LLC

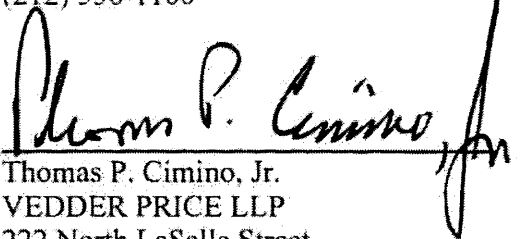
James K. Goldfarb
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, Floor 21
New York, New York 10020
(212) 880-3999

Attorneys for Quasar Distributors, LLC

Michael J. Hampson
ROLNICK KRAMER SADIGHI LLP
1251 Avenue of the Americas, Flr. 18
New York, New York 10020
(212) 597-2847

Attorneys for the Opt-Out Plaintiffs

Neal R. Jacobson
SECURITIES AND EXCHANGE
COMMISSION
100 Pearl St., Suite 20-100
New York, NY 10004-2616
(212) 336-1100


Thomas P. Cimino, Jr.
VEDDER PRICE LLP
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609 7784

Attorneys for U.S. Bancorp Fund Services, LLC

James K. Goldfarb
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas. Floor 21
New York, New York 10020
(212) 880-3999

Attorneys for Quasar Distributors, LLC

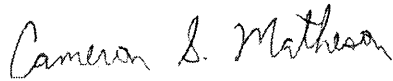
Michael J. Hampson
ROLNICK KRAMER SADIGHI LLP
1251 Avenue of the Americas. Flr. 18
New York, New York 10020
(212) 597-2847

Attorneys for the Opt-Out Plaintiffs

Neal R. Jacobson
SECURITIES AND EXCHANGE
COMMISSION
100 Pearl St., Suite 20-100
New York, NY 10004-2616
(212) 336-1100

Thomas P. Cimino, Jr.
VEDDER PRICE LLP
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609 7784

Attorneys for U.S. Bancorp Fund Services, LLC



Cameron S. Matheson
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, Floor 21
New York, New York 10020
(212) 880-3999

Attorneys for Quasar Distributors, LLC

Michael J. Hampson
ROLNICK KRAMER SADIGHI LLP
1251 Avenue of the Americas, Flr. 18
New York, New York 10020
(212) 597-2847

Attorneys for the Opt-Out Plaintiffs

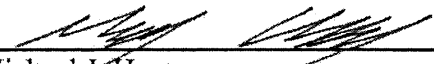
Neal R. Jacobson
SECURITIES AND EXCHANGE
COMMISSION
100 Pearl St., Suite 20-100
New York, NY 10004-2616
(212) 336-1100

Thomas P. Cimino, Jr.
VEDDER PRICE LLP
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609 7784

Attorneys for U.S. Bancorp Fund Services, LLC

James K. Goldfarb
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, Floor 21
New York, New York 10020
(212) 880-3999

Attorneys for Quasar Distributors, LLC




Michael J. Hampson
ROLNICK KRAMER SADIGHI LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 597-2847

Attorneys for the Opt-Out Plaintiffs

SO ORDERED:

Dated: New York, New York

May 29, 2024



HON. P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE